

# Scrap Metal Recycling Facility/Zoning: Indiana Appellate Court Addresses Challenge to Conditional Use Permit



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The Court of Appeals of Indiana (“Court”) addressed in an August 14th Opinion an issue arising out of the application of a local zoning ordinance to the construction of a scrap metal recycling facility. *See Monroe Cnty. Bd. of Zoning Appeals v. Bedford Recycling, Inc.*, 241 N.E.3d 1144 (Ind. Ct. App. 2024).

The question addressed was whether the Monroe County Board of Zoning Appeals (“BZA”) had the authority to revoke its prior decision granting a conditional use permit based on a mistake of law.

An administrative agency generally cannot change a final decision. However, it can correct its own error of law.

Bedford Recycling wanted to construct a facility to collect and sort scrap metal to be sent offsite for recycling on land zoned for Mineral Extraction. Accordingly, it applied for a conditional use permit under the standards for a Central Garbage/Rubbish Collection Facility. However, those standards only cover establishments that remove solid waste from homes and businesses and transport the waste to a landfill or other collection facility.

Bedford Recycling acknowledged that its planned facility would not handle solid waste or use waste hauling vehicles. Nevertheless, the BZA granted the conditional-use permit on September 1, 2021.

On October 1, 2021, a neighboring property owner petitioned for judicial review of the BZA’s decision. It argued that Bedford Recycling’s facility did not meet the requirements for Central Garbage/Rubbish Collection Facility conditional use.

In response, the BZA held a special session on December 15, 2021, to discuss the petition. At that meeting, the County Attorney indicated that since the proposed use might not satisfy all the elements of a Central Garbage/Rubbish Collection Facility, the BZA could hold a hearing to determine if the board erred as a matter of law.

The board elected to do so. On June 29, 2022, the BZA voted to revoke the conditional use permit. It found that the planned facility would not remove solid waste, use waste hauling vehicles, or transport waste to a landfill. Thus, the BZA determined it had acted beyond its legal authority and committed a legal error.

Bedford Recycling filed its own petition for judicial review arguing that the BZA revoked the permit based on mistakes of fact and a change of reasoning instead of an error of law. Even though some board members’ statements could indicate their votes changed based on new considerations, the Court cannot

disregard official findings to look into private motivations. Because the BZA's vote and findings were based upon what was known in September 2021, the revocation was not based upon a change in fact or reasoning. Further, it was a mistake of law because the proposed facility did not meet the requirements of a Central Garbage/Rubbish Collection Facility.

The Court did not address Bedford Recycling's argument that the revocation decision was untimely because this issue was not addressed at the trial court in its appellate brief.

A copy of the Opinion can be downloaded [here](#).